

HOUSE BILL 700

I4

2lr1168
CF SB 747

By: **Delegate Feldman**

Introduced and read first time: February 8, 2012

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Commercial Law – Uniform Commercial Code – Revisions to Title 1**

3 FOR the purpose of revising, updating, reorganizing, and clarifying Title 1 of the
4 Maryland Uniform Commercial Code (MUCC) relating to general provisions
5 applicable to the MUCC; establishing a certain short title; clarifying the
6 transactions to which Title 1 of the MUCC applies; providing for the effect of
7 Title 1 of the MUCC on a certain federal law; authorizing the subordination of
8 an obligation or a right to performance under certain circumstances; providing
9 that subordination does not create a certain security interest; making certain
10 stylistic changes; defining certain terms; altering and repealing certain
11 definitions; making conforming changes to certain provisions of the MUCC; and
12 generally relating to the Maryland Uniform Commercial Code.

13 BY repealing

14 Article – Commercial Law

15 Section 1–101 through 1–208 and the title “Title 1. General Provisions”; and
16 2–208 and 2A–207

17 Annotated Code of Maryland

18 (2002 Replacement Volume and 2011 Supplement)

19 BY adding to

20 Article – Commercial Law

21 Section 1–101 through 1–108 to be under the new subtitle “Subtitle 1. General
22 Provisions”; 1–201 through 1–206 to be under the new subtitle “Subtitle
23 2. General Definitions and Principles of Interpretation”; and 1–301
24 through 1–310 to be under the new subtitle “Subtitle 3. Territorial
25 Applicability and Applicable Law”; and the new title “Title 1. General
26 Provisions”

27 Annotated Code of Maryland

28 (2002 Replacement Volume and 2011 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Commercial Law
3 Section 2–103(1), 2–202, 2A–103(3), 2A–501(4), 2A–518(2), 2A–519(1),
4 2A–527(2), 2A–528(1), 3–103(a)(4) and (10), 4–104(c), 4A–105(a)(6) and
5 (7), 4A–106(a)(1), 4A–204(b), 5–103(c), 8–102(a)(10), and 9–102(a)(43)
6 Annotated Code of Maryland
7 (2002 Replacement Volume and 2011 Supplement)

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
9 MARYLAND, That Section(s) 1–101 through 1–208 and the title “Title 1. General
10 Provisions” of Article – Commercial Law of the Annotated Code of Maryland be
11 repealed.

12 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
13 read as follows:

14 **Article – Commercial Law**

15 **TITLE 1. GENERAL PROVISIONS.**

16 **SUBTITLE 1. GENERAL PROVISIONS.**

17 **1–101. SHORT TITLES.**

18 (A) TITLES 1 THROUGH 10 OF THIS ARTICLE MAY BE CITED AS THE
19 MARYLAND UNIFORM COMMERCIAL CODE.

20 (B) THIS TITLE MAY BE CITED AS MARYLAND UNIFORM COMMERCIAL
21 CODE – GENERAL PROVISIONS.

22 **1–102. SCOPE OF TITLE.**

23 THIS TITLE APPLIES TO A TRANSACTION TO THE EXTENT THAT IT IS
24 GOVERNED BY ANOTHER TITLE OF THE MARYLAND UNIFORM COMMERCIAL
25 CODE.

26 **1–103. CONSTRUCTION OF MARYLAND UNIFORM COMMERCIAL CODE;
27 APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW.**

28 (A) THE MARYLAND UNIFORM COMMERCIAL CODE SHALL BE
29 LIBERALLY CONSTRUED AND APPLIED TO PROMOTE ITS UNDERLYING
30 PURPOSES AND POLICIES.

31 (B) THE UNDERLYING PURPOSES AND POLICIES OF THE MARYLAND
32 UNIFORM COMMERCIAL CODE ARE:

1 **(1) TO SIMPLIFY, CLARIFY, AND MODERNIZE THE LAW**
2 **GOVERNING COMMERCIAL TRANSACTIONS;**

3 **(2) TO PERMIT THE CONTINUED EXPANSION OF COMMERCIAL**
4 **PRACTICES THROUGH CUSTOM, USAGE, AND AGREEMENT OF THE PARTIES; AND**

5 **(3) TO MAKE UNIFORM THE LAW AMONG THE VARIOUS**
6 **JURISDICTIONS.**

7 **(C) UNLESS DISPLACED BY THE PARTICULAR PROVISIONS OF THE**
8 **MARYLAND UNIFORM COMMERCIAL CODE, THE PRINCIPLES OF LAW AND**
9 **EQUITY, INCLUDING THE LAW MERCHANT AND THE LAW RELATIVE TO CAPACITY**
10 **TO CONTRACT, PRINCIPAL AND AGENT, ESTOPPEL, FRAUD,**
11 **MISREPRESENTATION, DURESS, COERCION, MISTAKE, BANKRUPTCY, OR OTHER**
12 **VALIDATING OR INVALIDATING CAUSE SHALL SUPPLEMENT ITS PROVISIONS,**
13 **EXCEPT THAT:**

14 **(1) THE AGE OF MAJORITY AS IT PERTAINS TO THE CAPACITY TO**
15 **CONTRACT IS 18 YEARS OF AGE; AND**

16 **(2) NO PERSON WHO IS AT LEAST 18 YEARS OLD SHALL BE**
17 **CONSIDERED TO BE WITHOUT CAPACITY BY REASON OF AGE.**

18 **1-104. CONSTRUCTION AGAINST IMPLIED REPEAL.**

19 **THE MARYLAND UNIFORM COMMERCIAL CODE BEING A GENERAL ACT**
20 **INTENDED AS A UNIFIED COVERAGE OF ITS SUBJECT MATTER, NO PART OF IT**
21 **SHALL BE DEEMED TO BE IMPLIEDLY REPEALED BY SUBSEQUENT LEGISLATION**
22 **IF SUCH CONSTRUCTION CAN REASONABLY BE AVOIDED.**

23 **1-105. SEVERABILITY.**

24 **IF ANY PROVISION OR CLAUSE OF THE MARYLAND UNIFORM**
25 **COMMERCIAL CODE OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCES**
26 **IS HELD INVALID, THE INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR**
27 **APPLICATIONS OF THE MARYLAND UNIFORM COMMERCIAL CODE THAT CAN BE**
28 **GIVEN EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO**
29 **THIS END THE PROVISIONS OF THE MARYLAND UNIFORM COMMERCIAL CODE**
30 **ARE SEVERABLE.**

31 **1-106. USE OF SINGULAR AND PLURAL; GENDER.**

1 **IN THE MARYLAND UNIFORM COMMERCIAL CODE, UNLESS THE CONTEXT**
2 **OTHERWISE REQUIRES:**

3 **(1) WORDS IN THE SINGULAR NUMBER INCLUDE THE PLURAL,**
4 **AND THOSE IN THE PLURAL INCLUDE THE SINGULAR; AND**

5 **(2) WORDS OF ANY GENDER ALSO REFER TO ANY OTHER GENDER.**

6 **1-107. SECTION CAPTIONS.**

7 **SECTION CAPTIONS ARE PART OF THE MARYLAND UNIFORM**
8 **COMMERCIAL CODE.**

9 **1-108. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
10 **NATIONAL COMMERCE ACT.**

11 **THIS TITLE MODIFIES, LIMITS, AND SUPERSEDES THE FEDERAL**
12 **ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT, 15**
13 **U.S.C. § 7001 ET SEQ., EXCEPT THAT NOTHING IN THIS TITLE MODIFIES, LIMITS,**
14 **OR SUPERSEDES § 7001(C) OF THAT ACT OR AUTHORIZES ELECTRONIC**
15 **DELIVERY OF ANY OF THE NOTICES DESCRIBED IN § 7003(B) OF THAT ACT.**

16 **SUBTITLE 2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION.**

17 **1-201. GENERAL DEFINITIONS.**

18 **(A) UNLESS THE CONTEXT OTHERWISE REQUIRES, WORDS OR PHRASES**
19 **DEFINED IN THIS SECTION, OR IN THE ADDITIONAL DEFINITIONS CONTAINED IN**
20 **OTHER TITLES OF THE MARYLAND UNIFORM COMMERCIAL CODE THAT APPLY**
21 **TO PARTICULAR TITLES OR PARTS OF TITLES OF THE MARYLAND UNIFORM**
22 **COMMERCIAL CODE, HAVE THE MEANINGS STATED.**

23 **(B) SUBJECT TO DEFINITIONS CONTAINED IN OTHER ARTICLES OF THE**
24 **MARYLAND UNIFORM COMMERCIAL CODE THAT APPLY TO PARTICULAR TITLES**
25 **OR PARTS OF TITLES OF THE MARYLAND UNIFORM COMMERCIAL CODE:**

26 **(1) “ACTION”, IN THE SENSE OF A JUDICIAL PROCEEDING,**
27 **INCLUDES RECOUPMENT, COUNTERCLAIM, SET-OFF, SUIT IN EQUITY, AND ANY**
28 **OTHER PROCEEDING IN WHICH RIGHTS ARE DETERMINED.**

29 **(2) “AGGRIEVED PARTY” MEANS A PARTY ENTITLED TO PURSUE A**
30 **REMEDY.**

1 (3) “AGREEMENT”, AS DISTINGUISHED FROM “CONTRACT”,
2 MEANS THE BARGAIN OF THE PARTIES IN FACT, AS FOUND IN THEIR LANGUAGE
3 OR INFERRED FROM OTHER CIRCUMSTANCES, INCLUDING COURSE OF
4 PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE AS PROVIDED IN §
5 1-303 OF THIS TITLE.

6 (4) “BANK” MEANS A PERSON ENGAGED IN THE BUSINESS OF
7 BANKING AND INCLUDES A SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION,
8 CREDIT UNION, AND TRUST COMPANY.

9 (5) “BEARER” MEANS A PERSON IN POSSESSION OF A
10 NEGOTIABLE INSTRUMENT, DOCUMENT OF TITLE, OR CERTIFICATED SECURITY
11 THAT IS PAYABLE TO BEARER OR ENDORSED IN BLANK.

12 (6) “BILL OF LADING” MEANS A DOCUMENT EVIDENCING THE
13 RECEIPT OF GOODS FOR SHIPMENT ISSUED BY A PERSON ENGAGED IN THE
14 BUSINESS OF TRANSPORTING OR FORWARDING GOODS.

15 (7) “BRANCH” INCLUDES A SEPARATELY INCORPORATED
16 FOREIGN BRANCH OF A BANK.

17 (8) “BURDEN OF ESTABLISHING” A FACT MEANS THE BURDEN OF
18 PERSUADING THE TRIER OF FACT THAT THE EXISTENCE OF THE FACT IS MORE
19 PROBABLE THAN ITS NONEXISTENCE.

20 (9) “BUYER IN ORDINARY COURSE OF BUSINESS” MEANS A
21 PERSON THAT BUYS GOODS IN GOOD FAITH, WITHOUT KNOWLEDGE THAT THE
22 SALE VIOLATES THE RIGHTS OF ANOTHER PERSON IN THE GOODS, AND IN THE
23 ORDINARY COURSE FROM A PERSON, OTHER THAN A PAWNBROKER, IN THE
24 BUSINESS OF SELLING GOODS OF THAT KIND. A PERSON BUYS GOODS IN THE
25 ORDINARY COURSE IF THE SALE TO THE PERSON COMPORTS WITH THE USUAL
26 OR CUSTOMARY PRACTICES IN THE KIND OF BUSINESS IN WHICH THE SELLER IS
27 ENGAGED OR WITH THE SELLER’S OWN USUAL OR CUSTOMARY PRACTICES. A
28 PERSON THAT SELLS OIL, GAS, OR OTHER MINERALS AT THE WELLHEAD OR
29 MINEHEAD IS A PERSON IN THE BUSINESS OF SELLING GOODS OF THAT KIND. A
30 BUYER IN ORDINARY COURSE OF BUSINESS MAY BUY FOR CASH, BY EXCHANGE
31 OF OTHER PROPERTY, OR ON SECURED OR UNSECURED CREDIT, AND MAY
32 ACQUIRE GOODS OR DOCUMENTS OF TITLE UNDER A PREEXISTING CONTRACT
33 FOR SALE. ONLY A BUYER THAT TAKES POSSESSION OF THE GOODS OR HAS A
34 RIGHT TO RECOVER THE GOODS FROM THE SELLER UNDER TITLE 2 OF THIS
35 ARTICLE MAY BE A BUYER IN ORDINARY COURSE OF BUSINESS. “BUYER IN
36 ORDINARY COURSE OF BUSINESS” DOES NOT INCLUDE A PERSON THAT

1 ACQUIRES GOODS IN A TRANSFER IN BULK OR AS SECURITY FOR OR IN TOTAL
2 OR PARTIAL SATISFACTION OF A MONEY DEBT.

3 (10) "CONSPICUOUS", WITH REFERENCE TO A TERM, MEANS SO
4 WRITTEN, DISPLAYED, OR PRESENTED THAT A REASONABLE PERSON AGAINST
5 WHICH IT IS TO OPERATE OUGHT TO HAVE NOTICED IT. WHETHER A TERM IS
6 "CONSPICUOUS" OR NOT IS A DECISION FOR THE COURT. CONSPICUOUS TERMS
7 INCLUDE THE FOLLOWING:

8 (I) A HEADING IN CAPITALS EQUAL TO OR GREATER IN SIZE
9 THAN THE SURROUNDING TEXT, OR IN CONTRASTING TYPE, FONT, OR COLOR TO
10 THE SURROUNDING TEXT OF THE SAME OR LESSER SIZE; AND

11 (II) LANGUAGE IN THE BODY OF A RECORD OR DISPLAY IN
12 LARGER TYPE THAN THE SURROUNDING TEXT, OR IN CONTRASTING TYPE, FONT,
13 OR COLOR TO THE SURROUNDING TEXT OF THE SAME SIZE, OR SET OFF FROM
14 SURROUNDING TEXT OF THE SAME SIZE BY SYMBOLS OR OTHER MARKS THAT
15 CALL ATTENTION TO THE LANGUAGE.

16 (11) "CONSUMER" MEANS AN INDIVIDUAL WHO ENTERS INTO A
17 TRANSACTION PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

18 (12) "CONTRACT", AS DISTINGUISHED FROM "AGREEMENT",
19 MEANS THE TOTAL LEGAL OBLIGATION THAT RESULTS FROM THE PARTIES'
20 AGREEMENT AS DETERMINED BY THE MARYLAND UNIFORM COMMERCIAL
21 CODE AS SUPPLEMENTED BY ANY OTHER APPLICABLE LAWS.

22 (13) "CREDITOR" INCLUDES A GENERAL CREDITOR, A SECURED
23 CREDITOR, A LIEN CREDITOR, AND ANY REPRESENTATIVE OF CREDITORS,
24 INCLUDING AN ASSIGNEE FOR THE BENEFIT OF CREDITORS, A TRUSTEE IN
25 BANKRUPTCY, A RECEIVER IN EQUITY, AND AN EXECUTOR OR ADMINISTRATOR
26 OF AN INSOLVENT DEBTOR'S OR ASSIGNOR'S ESTATE.

27 (14) "DEFENDANT" INCLUDES A PERSON IN THE POSITION OF
28 DEFENDANT IN A COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM.

29 (15) "DELIVERY", WITH RESPECT TO AN INSTRUMENT, DOCUMENT
30 OF TITLE, OR CHATTEL PAPER, MEANS VOLUNTARY TRANSFER OF POSSESSION.

31 (16) "DOCUMENT OF TITLE" INCLUDES A BILL OF LADING, DOCK
32 WARRANT, DOCK RECEIPT, WAREHOUSE RECEIPT OR ORDER FOR THE DELIVERY
33 OF GOODS, AND ALSO ANY OTHER DOCUMENT WHICH IN THE REGULAR COURSE
34 OF BUSINESS OR FINANCING IS TREATED AS ADEQUATELY EVIDENCING THAT

1 THE PERSON IN POSSESSION OF THE DOCUMENT IS ENTITLED TO RECEIVE,
2 HOLD, AND DISPOSE OF THE DOCUMENT AND THE GOODS IT COVERS. TO BE A
3 DOCUMENT OF TITLE, A DOCUMENT MUST PURPORT TO BE ISSUED BY OR
4 ADDRESSED TO A BAILEE AND PURPORT TO COVER GOODS IN THE BAILEE'S
5 POSSESSION WHICH ARE EITHER IDENTIFIED OR ARE FUNGIBLE PORTIONS OF
6 AN IDENTIFIED MASS.

7 (17) "FAULT" MEANS A DEFAULT, BREACH, OR WRONGFUL ACT OR
8 OMISSION.

9 (18) "FUNGIBLE GOODS" MEANS:

10 (I) GOODS OF WHICH ANY UNIT, BY NATURE OR USAGE OF
11 TRADE, IS THE EQUIVALENT OF ANY OTHER LIKE UNIT; OR

12 (II) GOODS THAT BY AGREEMENT ARE TREATED AS
13 EQUIVALENT.

14 (19) "GENUINE" MEANS FREE OF FORGERY OR COUNTERFEITING.

15 (20) "GOOD FAITH", EXCEPT AS OTHERWISE PROVIDED IN TITLE 5
16 OF THIS ARTICLE, MEANS HONESTY IN FACT AND THE OBSERVANCE OF
17 REASONABLE COMMERCIAL STANDARDS OF FAIR DEALING.

18 (21) "HOLDER" MEANS:

19 (I) THE PERSON IN POSSESSION OF A NEGOTIABLE
20 INSTRUMENT THAT IS PAYABLE EITHER TO BEARER OR TO AN IDENTIFIED
21 PERSON THAT IS THE PERSON IN POSSESSION; OR

22 (II) THE PERSON IN POSSESSION OF A DOCUMENT OF TITLE
23 IF THE GOODS ARE DELIVERABLE EITHER TO BEARER OR TO THE ORDER OF THE
24 PERSON IN POSSESSION.

25 (22) "INSOLVENCY PROCEEDING" INCLUDES AN ASSIGNMENT FOR
26 THE BENEFIT OF CREDITORS OR OTHER PROCEEDING INTENDED TO LIQUIDATE
27 OR REHABILITATE THE ESTATE OF THE PERSON INVOLVED.

28 (23) "INSOLVENT" MEANS:

29 (I) HAVING GENERALLY CEASED TO PAY DEBTS IN THE
30 ORDINARY COURSE OF BUSINESS OTHER THAN AS A RESULT OF BONA FIDE
31 DISPUTE;

1 (II) BEING UNABLE TO PAY DEBTS AS THEY BECOME DUE;
2 OR

3 (III) BEING INSOLVENT WITHIN THE MEANING OF FEDERAL
4 BANKRUPTCY LAW.

5 (24) “MONEY” MEANS A MEDIUM OF EXCHANGE CURRENTLY
6 AUTHORIZED OR ADOPTED BY A DOMESTIC OR FOREIGN GOVERNMENT. THE
7 TERM INCLUDES A MONETARY UNIT OF ACCOUNT ESTABLISHED BY AN
8 INTERGOVERNMENTAL ORGANIZATION OR BY AGREEMENT BETWEEN TWO OR
9 MORE COUNTRIES.

10 (25) “ORGANIZATION” MEANS A PERSON OTHER THAN AN
11 INDIVIDUAL.

12 (26) “PARTY”, AS DISTINGUISHED FROM “THIRD PARTY”, MEANS A
13 PERSON THAT HAS ENGAGED IN A TRANSACTION OR MADE AN AGREEMENT
14 SUBJECT TO THE MARYLAND UNIFORM COMMERCIAL CODE.

15 (27) “PERSON” MEANS AN INDIVIDUAL, CORPORATION, BUSINESS
16 TRUST, ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY,
17 ASSOCIATION, JOINT VENTURE, GOVERNMENT, GOVERNMENTAL SUBDIVISION,
18 AGENCY, OR INSTRUMENTALITY, PUBLIC CORPORATION, OR ANY OTHER LEGAL
19 OR COMMERCIAL ENTITY.

20 (28) “PRESENT VALUE” MEANS THE AMOUNT AS OF A DATE
21 CERTAIN OF ONE OR MORE SUMS PAYABLE IN THE FUTURE, DISCOUNTED TO
22 THE DATE CERTAIN BY USE OF EITHER AN INTEREST RATE SPECIFIED BY THE
23 PARTIES IF THAT RATE IS NOT MANIFESTLY UNREASONABLE AT THE TIME THE
24 TRANSACTION IS ENTERED INTO OR, IF AN INTEREST RATE IS NOT SO
25 SPECIFIED, A COMMERCIALY REASONABLE RATE THAT TAKES INTO ACCOUNT
26 THE FACTS AND CIRCUMSTANCES AT THE TIME THE TRANSACTION IS ENTERED
27 INTO.

28 (29) “PURCHASE” MEANS TAKING BY SALE, LEASE, DISCOUNT,
29 NEGOTIATION, MORTGAGE, PLEDGE, LIEN, SECURITY INTEREST, ISSUE OR
30 REISSUE, GIFT, OR ANY OTHER VOLUNTARY TRANSACTION CREATING AN
31 INTEREST IN PROPERTY.

32 (30) “PURCHASER” MEANS A PERSON THAT TAKES BY PURCHASE.

1 **(31) “RECORD” MEANS INFORMATION THAT IS INSCRIBED ON A**
2 **TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM**
3 **AND IS RETRIEVABLE IN PERCEIVABLE FORM.**

4 **(32) “REMEDY” MEANS ANY REMEDIAL RIGHT TO WHICH AN**
5 **AGGRIEVED PARTY IS ENTITLED WITH OR WITHOUT RESORT TO A TRIBUNAL.**

6 **(33) “REPRESENTATIVE” MEANS A PERSON EMPOWERED TO ACT**
7 **FOR ANOTHER, INCLUDING AN AGENT, AN OFFICER OF A CORPORATION OR**
8 **ASSOCIATION, AND A TRUSTEE, EXECUTOR, OR ADMINISTRATOR OF AN ESTATE.**

9 **(34) “RIGHT” INCLUDES REMEDY.**

10 **(35) “SECURITY INTEREST” MEANS AN INTEREST IN PERSONAL**
11 **PROPERTY OR FIXTURES THAT SECURES PAYMENT OR PERFORMANCE OF AN**
12 **OBLIGATION. “SECURITY INTEREST” INCLUDES ANY INTEREST OF A CONSIGNOR**
13 **AND A BUYER OF ACCOUNTS, CHATTEL PAPER, A PAYMENT INTANGIBLE, OR A**
14 **PROMISSORY NOTE IN A TRANSACTION THAT IS SUBJECT TO TITLE 9 OF THIS**
15 **ARTICLE. “SECURITY INTEREST” DOES NOT INCLUDE THE SPECIAL PROPERTY**
16 **INTEREST OF A BUYER OF GOODS ON IDENTIFICATION OF THOSE GOODS TO A**
17 **CONTRACT FOR SALE UNDER § 2-401 OF THIS ARTICLE, BUT A BUYER MAY ALSO**
18 **ACQUIRE A “SECURITY INTEREST” BY COMPLYING WITH TITLE 9 OF THIS**
19 **ARTICLE. EXCEPT AS OTHERWISE PROVIDED IN § 2-505 OF THIS ARTICLE, THE**
20 **RIGHT OF A SELLER OR LESSOR OF GOODS UNDER TITLE 2 OR TITLE 2A OF THIS**
21 **ARTICLE TO RETAIN OR ACQUIRE POSSESSION OF THE GOODS IS NOT A**
22 **“SECURITY INTEREST”, BUT A SELLER OR LESSOR MAY ALSO ACQUIRE A**
23 **“SECURITY INTEREST” BY COMPLYING WITH TITLE 9 OF THIS ARTICLE. THE**
24 **RETENTION OR RESERVATION OF TITLE BY A SELLER OF GOODS**
25 **NOTWITHSTANDING SHIPMENT OR DELIVERY TO THE BUYER UNDER § 2-401 OF**
26 **THIS ARTICLE IS LIMITED IN EFFECT TO A RESERVATION OF A “SECURITY**
27 **INTEREST”. WHETHER A TRANSACTION IN THE FORM OF A LEASE CREATES A**
28 **“SECURITY INTEREST” IS DETERMINED PURSUANT TO § 1-203 OF THIS**
29 **SUBTITLE.**

30 **(36) “SEND” IN CONNECTION WITH A WRITING, RECORD, OR**
31 **NOTICE MEANS:**

32 **(I) TO DEPOSIT IN THE MAIL OR DELIVER FOR**
33 **TRANSMISSION BY ANY OTHER USUAL MEANS OF COMMUNICATION WITH**
34 **POSTAGE OR COST OF TRANSMISSION PROVIDED FOR AND PROPERLY**
35 **ADDRESSED AND, IN THE CASE OF AN INSTRUMENT, TO AN ADDRESS SPECIFIED**
36 **THEREON OR OTHERWISE AGREED OR, IF THERE BE NONE, TO ANY ADDRESS**
37 **REASONABLE UNDER THE CIRCUMSTANCES; OR**

1 (II) IN ANY OTHER WAY TO CAUSE TO BE RECEIVED ANY
2 RECORD OR NOTICE WITHIN THE TIME IT WOULD HAVE ARRIVED IF PROPERLY
3 SENT.

4 (37) “SIGNED” INCLUDES USING ANY SYMBOL EXECUTED OR
5 ADOPTED WITH PRESENT INTENTION TO ADOPT OR ACCEPT A WRITING.

6 (38) “STATE” MEANS A STATE OF THE UNITED STATES, THE
7 DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS,
8 OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE JURISDICTION
9 OF THE UNITED STATES.

10 (39) “SURETY” INCLUDES A GUARANTOR OR OTHER SECONDARY
11 OBLIGOR.

12 (40) “TERM” MEANS A PORTION OF AN AGREEMENT THAT RELATES
13 TO A PARTICULAR MATTER.

14 (41) “UNAUTHORIZED SIGNATURE” MEANS A SIGNATURE MADE
15 WITHOUT ACTUAL, IMPLIED, OR APPARENT AUTHORITY. THE TERM INCLUDES A
16 FORGERY.

17 (42) “WAREHOUSE RECEIPT” MEANS A RECEIPT ISSUED BY A
18 PERSON ENGAGED IN THE BUSINESS OF STORING GOODS FOR HIRE.

19 (43) “WRITING” INCLUDES PRINTING, TYPEWRITING, OR ANY
20 OTHER INTENTIONAL REDUCTION TO TANGIBLE FORM. “WRITTEN” HAS A
21 CORRESPONDING MEANING.

22 1-202. NOTICE; KNOWLEDGE.

23 (A) SUBJECT TO SUBSECTION (F) OF THIS SECTION, A PERSON HAS
24 “NOTICE” OF A FACT IF THE PERSON:

25 (1) HAS ACTUAL KNOWLEDGE OF IT;

26 (2) HAS RECEIVED A NOTICE OR NOTIFICATION OF IT; OR

27 (3) FROM ALL THE FACTS AND CIRCUMSTANCES KNOWN TO THE
28 PERSON AT THE TIME IN QUESTION, HAS REASON TO KNOW THAT IT EXISTS.

1 **(B) “KNOWLEDGE” MEANS ACTUAL KNOWLEDGE. “KNOWS” HAS A**
2 **CORRESPONDING MEANING.**

3 **(C) “DISCOVER”, “LEARN”, OR WORDS OF SIMILAR IMPORT REFER TO**
4 **KNOWLEDGE RATHER THAN TO REASON TO KNOW.**

5 **(D) A PERSON “NOTIFIES” OR “GIVES” A NOTICE OR NOTIFICATION TO**
6 **ANOTHER PERSON BY TAKING SUCH STEPS AS MAY BE REASONABLY REQUIRED**
7 **TO INFORM THE OTHER PERSON IN ORDINARY COURSE, WHETHER OR NOT THE**
8 **OTHER PERSON ACTUALLY COMES TO KNOW OF IT.**

9 **(E) SUBJECT TO SUBSECTION (F) OF THIS SECTION, A PERSON**
10 **“RECEIVES” A NOTICE OR NOTIFICATION WHEN:**

11 **(1) IT COMES TO THAT PERSON’S ATTENTION; OR**

12 **(2) IT IS DULY DELIVERED IN A FORM REASONABLE UNDER THE**
13 **CIRCUMSTANCES AT THE PLACE OF BUSINESS THROUGH WHICH THE CONTRACT**
14 **WAS MADE OR AT ANOTHER LOCATION HELD OUT BY THAT PERSON AS THE**
15 **PLACE FOR RECEIPT OF SUCH COMMUNICATIONS.**

16 **(F) NOTICE, KNOWLEDGE, OR A NOTICE OR NOTIFICATION RECEIVED**
17 **BY AN ORGANIZATION IS EFFECTIVE FOR A PARTICULAR TRANSACTION FROM**
18 **THE TIME THE TRANSACTION IS BROUGHT TO THE ATTENTION OF THE**
19 **INDIVIDUAL CONDUCTING THAT TRANSACTION AND, IN ANY EVENT, FROM THE**
20 **TIME THE TRANSACTION WOULD HAVE BEEN BROUGHT TO THE INDIVIDUAL’S**
21 **ATTENTION IF THE ORGANIZATION HAD EXERCISED DUE DILIGENCE. AN**
22 **ORGANIZATION EXERCISES DUE DILIGENCE IF THE ORGANIZATION MAINTAINS**
23 **REASONABLE ROUTINES FOR COMMUNICATING SIGNIFICANT INFORMATION TO**
24 **THE PERSON CONDUCTING THE TRANSACTION AND THERE IS REASONABLE**
25 **COMPLIANCE WITH THE ROUTINES. DUE DILIGENCE DOES NOT REQUIRE AN**
26 **INDIVIDUAL ACTING FOR THE ORGANIZATION TO COMMUNICATE INFORMATION**
27 **UNLESS THE COMMUNICATION IS PART OF THE INDIVIDUAL’S REGULAR DUTIES**
28 **OR THE INDIVIDUAL HAS REASON TO KNOW OF THE TRANSACTION AND THAT**
29 **THE TRANSACTION WOULD BE MATERIALLY AFFECTED BY THE INFORMATION.**

30 **1-203. LEASE DISTINGUISHED FROM SECURITY INTEREST.**

31 **(A) WHETHER A TRANSACTION IN THE FORM OF A LEASE CREATES A**
32 **LEASE OR SECURITY INTEREST IS DETERMINED BY THE FACTS OF EACH CASE.**

33 **(B) A TRANSACTION IN THE FORM OF A LEASE CREATES A SECURITY**
34 **INTEREST IF THE CONSIDERATION THAT THE LESSEE IS TO PAY THE LESSOR**

1 FOR THE RIGHT TO POSSESSION AND USE OF THE GOODS IS AN OBLIGATION FOR
2 THE TERM OF THE LEASE AND IS NOT SUBJECT TO TERMINATION BY THE
3 LESSEE; AND

4 (1) THE ORIGINAL TERM OF THE LEASE IS EQUAL TO OR GREATER
5 THAN THE REMAINING ECONOMIC LIFE OF THE GOODS;

6 (2) THE LESSEE IS BOUND TO RENEW THE LEASE FOR THE
7 REMAINING ECONOMIC LIFE OF THE GOODS OR IS BOUND TO BECOME THE
8 OWNER OF THE GOODS;

9 (3) THE LESSEE HAS AN OPTION TO RENEW THE LEASE FOR THE
10 REMAINING ECONOMIC LIFE OF THE GOODS FOR NO ADDITIONAL
11 CONSIDERATION OR FOR NOMINAL ADDITIONAL CONSIDERATION UPON
12 COMPLIANCE WITH THE LEASE AGREEMENT; OR

13 (4) THE LESSEE HAS AN OPTION TO BECOME THE OWNER OF THE
14 GOODS FOR NO ADDITIONAL CONSIDERATION OR FOR NOMINAL ADDITIONAL
15 CONSIDERATION UPON COMPLIANCE WITH THE LEASE AGREEMENT.

16 (C) A TRANSACTION IN THE FORM OF A LEASE DOES NOT CREATE A
17 SECURITY INTEREST MERELY BECAUSE:

18 (1) THE PRESENT VALUE OF THE CONSIDERATION THE LESSEE IS
19 OBLIGATED TO PAY THE LESSOR FOR THE RIGHT TO POSSESSION AND USE OF
20 THE GOODS IS SUBSTANTIALLY EQUAL TO OR IS GREATER THAN THE FAIR
21 MARKET VALUE OF THE GOODS AT THE TIME THE LEASE IS ENTERED INTO;

22 (2) THE LESSEE ASSUMES RISK OF LOSS OF THE GOODS;

23 (3) THE LESSEE AGREES TO PAY, WITH RESPECT TO THE GOODS,
24 TAXES, INSURANCE, FILING, RECORDING, OR REGISTRATION FEES, OR SERVICE
25 OR MAINTENANCE COSTS;

26 (4) THE LESSEE HAS AN OPTION TO RENEW THE LEASE OR TO
27 BECOME THE OWNER OF THE GOODS;

28 (5) THE LESSEE HAS AN OPTION TO RENEW THE LEASE FOR A
29 FIXED RENT THAT IS EQUAL TO OR GREATER THAN THE REASONABLY
30 PREDICTABLE FAIR MARKET RENT FOR THE USE OF THE GOODS FOR THE TERM
31 OF THE RENEWAL AT THE TIME THE OPTION IS TO BE PERFORMED; OR

1 **(6) THE LESSEE HAS AN OPTION TO BECOME THE OWNER OF THE**
2 **GOODS FOR A FIXED PRICE THAT IS EQUAL TO OR GREATER THAN THE**
3 **REASONABLY PREDICTABLE FAIR MARKET VALUE OF THE GOODS AT THE TIME**
4 **THE OPTION IS TO BE PERFORMED.**

5 **(D) ADDITIONAL CONSIDERATION IS NOMINAL IF IT IS LESS THAN THE**
6 **LESSEE'S REASONABLY PREDICTABLE COST OF PERFORMING UNDER THE LEASE**
7 **AGREEMENT IF THE OPTION IS NOT EXERCISED. ADDITIONAL CONSIDERATION**
8 **IS NOT NOMINAL IF:**

9 **(1) WHEN THE OPTION TO RENEW THE LEASE IS GRANTED TO THE**
10 **LESSEE, THE RENT IS STATED TO BE THE FAIR MARKET RENT FOR THE USE OF**
11 **THE GOODS FOR THE TERM OF THE RENEWAL DETERMINED AT THE TIME THE**
12 **OPTION IS TO BE PERFORMED; OR**

13 **(2) WHEN THE OPTION TO BECOME THE OWNER OF THE GOODS IS**
14 **GRANTED TO THE LESSEE, THE PRICE IS STATED TO BE THE FAIR MARKET**
15 **VALUE OF THE GOODS DETERMINED AT THE TIME THE OPTION IS TO BE**
16 **PERFORMED.**

17 **(E) THE "REMAINING ECONOMIC LIFE OF THE GOODS" AND**
18 **"REASONABLY PREDICTABLE" FAIR MARKET RENT, FAIR MARKET VALUE, OR**
19 **COST OF PERFORMING UNDER THE LEASE AGREEMENT MUST BE DETERMINED**
20 **WITH REFERENCE TO THE FACTS AND CIRCUMSTANCES AT THE TIME THE**
21 **TRANSACTION IS ENTERED INTO.**

22 **1-204. VALUE.**

23 **EXCEPT AS OTHERWISE PROVIDED IN §§ 3-303, 4-208, AND 4-209 OF THIS**
24 **ARTICLE, A PERSON GIVES VALUE FOR RIGHTS IF THE PERSON ACQUIRES THEM:**

25 **(1) IN RETURN FOR A BINDING COMMITMENT TO EXTEND CREDIT**
26 **OR FOR THE EXTENSION OF IMMEDIATELY AVAILABLE CREDIT, WHETHER OR**
27 **NOT DRAWN UPON AND WHETHER OR NOT A CHARGE-BACK IS PROVIDED FOR IN**
28 **THE EVENT OF DIFFICULTIES IN COLLECTION;**

29 **(2) AS SECURITY FOR, OR IN TOTAL OR PARTIAL SATISFACTION**
30 **OF, A PREEXISTING CLAIM;**

31 **(3) BY ACCEPTING DELIVERY UNDER A PREEXISTING CONTRACT**
32 **FOR PURCHASE; OR**

1 **(4) IN RETURN FOR ANY CONSIDERATION SUFFICIENT TO**
2 **SUPPORT A SIMPLE CONTRACT.**

3 **1-205. REASONABLE TIME; SEASONABLENESS.**

4 **(A) WHETHER A TIME FOR TAKING AN ACTION REQUIRED BY THE**
5 **MARYLAND UNIFORM COMMERCIAL CODE IS REASONABLE DEPENDS ON THE**
6 **NATURE, PURPOSE, AND CIRCUMSTANCES OF THE ACTION.**

7 **(B) AN ACTION IS TAKEN SEASONABLY IF IT IS TAKEN AT OR WITHIN**
8 **THE TIME AGREED OR, IF NO TIME IS AGREED, AT OR WITHIN A REASONABLE**
9 **TIME.**

10 **1-206. PRESUMPTIONS.**

11 **WHENEVER THE MARYLAND UNIFORM COMMERCIAL CODE CREATES A**
12 **“PRESUMPTION” WITH RESPECT TO A FACT OR PROVIDES THAT A FACT IS**
13 **“PRESUMED” THE TRIER OF FACT MUST FIND THE EXISTENCE OF THE FACT**
14 **UNLESS AND UNTIL EVIDENCE IS INTRODUCED THAT SUPPORTS A FINDING OF**
15 **ITS NONEXISTENCE.**

16 **SUBTITLE 3. TERRITORIAL APPLICABILITY AND APPLICABLE LAW.**

17 **1-301. TERRITORIAL APPLICABILITY; PARTIES’ POWER TO CHOOSE**
18 **APPLICABLE LAW.**

19 **(A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, WHEN A**
20 **TRANSACTION BEARS A REASONABLE RELATION TO THIS STATE AND ALSO TO**
21 **ANOTHER STATE OR NATION, THE PARTIES MAY AGREE THAT THE LAW EITHER**
22 **OF THIS STATE OR OF SUCH OTHER STATE OR NATION SHALL GOVERN THEIR**
23 **RIGHTS AND DUTIES.**

24 **(B) IN THE ABSENCE OF AN AGREEMENT EFFECTIVE UNDER**
25 **SUBSECTION (A) OF THIS SECTION, AND EXCEPT AS PROVIDED IN SUBSECTION**
26 **(C) OF THIS SECTION, THE MARYLAND UNIFORM COMMERCIAL CODE APPLIES**
27 **TO TRANSACTIONS BEARING AN APPROPRIATE RELATION TO THIS STATE.**

28 **(C) IF ONE OF THE FOLLOWING PROVISIONS OF THE MARYLAND**
29 **UNIFORM COMMERCIAL CODE SPECIFIES THE APPLICABLE LAW, THAT**
30 **PROVISION GOVERNS AND A CONTRARY AGREEMENT IS EFFECTIVE ONLY TO**
31 **THE EXTENT PERMITTED BY THE LAW (INCLUDING THE CONFLICT OF LAWS**
32 **RULES) SO SPECIFIED:**

- 1 (1) SECTION 2-402;
- 2 (2) SECTIONS 2A-105 AND 2A-106;
- 3 (3) SECTION 4-102;
- 4 (4) SECTION 4A-507;
- 5 (5) SECTION 5-116;
- 6 (6) SECTION 6-103;
- 7 (7) SECTION 8-110; OR
- 8 (8) SECTIONS 9-301 THROUGH 9-307.

9 **1-302. VARIATION BY AGREEMENT.**

10 (A) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS
11 SECTION OR ELSEWHERE IN THE MARYLAND UNIFORM COMMERCIAL CODE,
12 THE EFFECT OF PROVISIONS OF THE MARYLAND UNIFORM COMMERCIAL CODE
13 MAY BE VARIED BY AGREEMENT.

14 (B) THE OBLIGATIONS OF GOOD FAITH, DILIGENCE, REASONABLENESS,
15 AND CARE PRESCRIBED BY THE MARYLAND UNIFORM COMMERCIAL CODE MAY
16 NOT BE DISCLAIMED BY AGREEMENT. THE PARTIES, BY AGREEMENT, MAY
17 DETERMINE THE STANDARDS BY WHICH THE PERFORMANCE OF THOSE
18 OBLIGATIONS IS TO BE MEASURED IF THOSE STANDARDS ARE NOT MANIFESTLY
19 UNREASONABLE. WHENEVER THE MARYLAND UNIFORM COMMERCIAL CODE
20 REQUIRES AN ACTION TO BE TAKEN WITHIN A REASONABLE TIME, A TIME THAT
21 IS NOT MANIFESTLY UNREASONABLE MAY BE FIXED BY AGREEMENT.

22 (C) THE PRESENCE IN CERTAIN PROVISIONS OF THE MARYLAND
23 UNIFORM COMMERCIAL CODE OF THE PHRASE "UNLESS OTHERWISE AGREED",
24 OR WORDS OF SIMILAR IMPORT, DOES NOT IMPLY THAT THE EFFECT OF OTHER
25 PROVISIONS MAY NOT BE VARIED BY AGREEMENT UNDER THIS SECTION.

26 **1-303. COURSE OF PERFORMANCE, COURSE OF DEALING, AND USAGE OF**
27 **TRADE.**

28 (A) A "COURSE OF PERFORMANCE" IS A SEQUENCE OF CONDUCT
29 BETWEEN THE PARTIES TO A PARTICULAR TRANSACTION THAT EXISTS IF:

1 **(1) THE AGREEMENT OF THE PARTIES WITH RESPECT TO THE**
2 **TRANSACTION INVOLVES REPEATED OCCASIONS FOR PERFORMANCE BY A**
3 **PARTY; AND**

4 **(2) THE OTHER PARTY, WITH KNOWLEDGE OF THE NATURE OF**
5 **THE PERFORMANCE AND OPPORTUNITY FOR OBJECTION TO IT, ACCEPTS THE**
6 **PERFORMANCE OR ACQUIESCES IN IT WITHOUT OBJECTION.**

7 **(B) A “COURSE OF DEALING” IS A SEQUENCE OF CONDUCT**
8 **CONCERNING PREVIOUS TRANSACTIONS BETWEEN THE PARTIES TO A**
9 **PARTICULAR TRANSACTION THAT IS FAIRLY TO BE REGARDED AS ESTABLISHING**
10 **A COMMON BASIS OF UNDERSTANDING FOR INTERPRETING THEIR EXPRESSIONS**
11 **AND OTHER CONDUCT.**

12 **(C) A “USAGE OF TRADE” IS ANY PRACTICE OR METHOD OF DEALING**
13 **HAVING SUCH REGULARITY OF OBSERVANCE IN A PLACE, VOCATION, OR TRADE**
14 **AS TO JUSTIFY AN EXPECTATION THAT IT WILL BE OBSERVED WITH RESPECT TO**
15 **THE TRANSACTION IN QUESTION. THE EXISTENCE AND SCOPE OF SUCH A USAGE**
16 **MUST BE PROVED AS FACTS. IF IT IS ESTABLISHED THAT SUCH A USAGE IS**
17 **EMBODIED IN A TRADE CODE OR SIMILAR RECORD, THE INTERPRETATION OF**
18 **THE RECORD IS A QUESTION OF LAW.**

19 **(D) A COURSE OF PERFORMANCE OR COURSE OF DEALING BETWEEN**
20 **THE PARTIES OR USAGE OF TRADE IN THE VOCATION OR TRADE IN WHICH THEY**
21 **ARE ENGAGED OR OF WHICH THEY ARE OR SHOULD BE AWARE IS RELEVANT IN**
22 **ASCERTAINING THE MEANING OF THE PARTIES’ AGREEMENT, MAY GIVE**
23 **PARTICULAR MEANING TO SPECIFIC TERMS OF THE AGREEMENT, AND MAY**
24 **SUPPLEMENT OR QUALIFY THE TERMS OF THE AGREEMENT. A USAGE OF TRADE**
25 **APPLICABLE IN THE PLACE IN WHICH PART OF THE PERFORMANCE UNDER THE**
26 **AGREEMENT IS TO OCCUR MAY BE SO UTILIZED AS TO THAT PART OF THE**
27 **PERFORMANCE.**

28 **(E) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (F) OF THIS**
29 **SECTION, THE EXPRESS TERMS OF AN AGREEMENT AND ANY APPLICABLE**
30 **COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE SHALL**
31 **BE CONSTRUED WHENEVER REASONABLE AS CONSISTENT WITH EACH OTHER. IF**
32 **SUCH A CONSTRUCTION IS UNREASONABLE:**

33 **(1) EXPRESS TERMS PREVAIL OVER COURSE OF PERFORMANCE,**
34 **COURSE OF DEALING, AND USAGE OF TRADE;**

35 **(2) COURSE OF PERFORMANCE PREVAILS OVER COURSE OF**
36 **DEALING AND USAGE OF TRADE; AND**

1 **(3) COURSE OF DEALING PREVAILS OVER USAGE OF TRADE.**

2 **(F) SUBJECT TO § 2-209 OF THIS ARTICLE, A COURSE OF**
3 **PERFORMANCE IS RELEVANT TO SHOW A WAIVER OR MODIFICATION OF ANY**
4 **TERM INCONSISTENT WITH THE COURSE OF PERFORMANCE.**

5 **(G) EVIDENCE OF A RELEVANT USAGE OF TRADE OFFERED BY ONE**
6 **PARTY IS NOT ADMISSIBLE UNLESS THAT PARTY HAS GIVEN THE OTHER PARTY**
7 **NOTICE THAT THE COURT FINDS SUFFICIENT TO PREVENT UNFAIR SURPRISE TO**
8 **THE OTHER PARTY.**

9 **1-304. OBLIGATION OF GOOD FAITH.**

10 **EVERY CONTRACT OR DUTY WITHIN THE MARYLAND UNIFORM**
11 **COMMERCIAL CODE IMPOSES AN OBLIGATION OF GOOD FAITH IN ITS**
12 **PERFORMANCE AND ENFORCEMENT.**

13 **1-305. REMEDIES TO BE LIBERALLY ADMINISTERED.**

14 **(A) THE REMEDIES PROVIDED BY THE MARYLAND UNIFORM**
15 **COMMERCIAL CODE SHALL BE LIBERALLY ADMINISTERED TO THE END THAT**
16 **THE AGGRIEVED PARTY MAY BE PUT IN AS GOOD A POSITION AS IF THE OTHER**
17 **PARTY HAD FULLY PERFORMED, BUT NEITHER CONSEQUENTIAL OR SPECIAL**
18 **DAMAGES NOR PENAL DAMAGES MAY BE HAD EXCEPT AS SPECIFICALLY**
19 **PROVIDED IN THE MARYLAND UNIFORM COMMERCIAL CODE OR BY OTHER**
20 **RULE OF LAW.**

21 **(B) ANY RIGHT OR OBLIGATION DECLARED BY THE MARYLAND**
22 **UNIFORM COMMERCIAL CODE IS ENFORCEABLE BY ACTION UNLESS THE**
23 **PROVISION DECLARING THE RIGHT OR OBLIGATION SPECIFIES A DIFFERENT**
24 **AND LIMITED EFFECT.**

25 **1-306. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER BREACH.**

26 **A CLAIM OR RIGHT ARISING OUT OF AN ALLEGED BREACH MAY BE**
27 **DISCHARGED IN WHOLE OR IN PART WITHOUT CONSIDERATION BY AGREEMENT**
28 **OF THE AGGRIEVED PARTY IN AN AUTHENTICATED RECORD.**

29 **1-307. PRIMA FACIE EVIDENCE BY THIRD PARTY.**

30 **A DOCUMENT IN DUE FORM PURPORTING TO BE A BILL OF LADING,**
31 **POLICY OR CERTIFICATE OF INSURANCE, OFFICIAL WEIGHER'S OR INSPECTOR'S**

1 CERTIFICATE, CONSULAR INVOICE, OR ANY OTHER DOCUMENT AUTHORIZED OR
2 REQUIRED BY THE CONTRACT TO BE ISSUED BY A THIRD PARTY IS PRIMA FACIE
3 EVIDENCE OF ITS OWN AUTHENTICITY AND GENUINENESS AND OF THE FACTS
4 STATED IN THE DOCUMENT BY THE THIRD PARTY.

5 **1-308. PERFORMANCE OR ACCEPTANCE UNDER RESERVATION OF RIGHTS.**

6 (A) A PARTY THAT WITH EXPLICIT RESERVATION OF RIGHTS PERFORMS
7 OR PROMISES PERFORMANCE OR ASSENTS TO PERFORMANCE IN A MANNER
8 DEMANDED OR OFFERED BY THE OTHER PARTY DOES NOT THEREBY PREJUDICE
9 THE RIGHTS RESERVED. SUCH WORDS AS “WITHOUT PREJUDICE”, “UNDER
10 PROTEST”, OR THE LIKE ARE SUFFICIENT.

11 (B) SUBSECTION (A) OF THIS SECTION DOES NOT APPLY TO AN ACCORD
12 AND SATISFACTION.

13 **1-309. OPTION TO ACCELERATE AT WILL.**

14 (A) A TERM PROVIDING THAT ONE PARTY OR THAT PARTY’S SUCCESSOR
15 IN INTEREST MAY ACCELERATE PAYMENT OR PERFORMANCE OR REQUIRE
16 COLLATERAL OR ADDITIONAL COLLATERAL “AT WILL” OR WHEN THE PARTY
17 “DEEMS ITSELF INSECURE”, OR WORDS OF SIMILAR IMPORT, MEANS THAT THE
18 PARTY HAS POWER TO DO SO ONLY IF THAT PARTY IN GOOD FAITH BELIEVES
19 THAT THE PROSPECT OF PAYMENT OR PERFORMANCE IS IMPAIRED.

20 (B) THE BURDEN OF ESTABLISHING LACK OF GOOD FAITH IS ON THE
21 PARTY AGAINST WHICH THE POWER HAS BEEN EXERCISED.

22 **1-310. SUBORDINATED OBLIGATIONS.**

23 (A) AN OBLIGATION MAY BE ISSUED AS SUBORDINATED TO
24 PERFORMANCE OF ANOTHER OBLIGATION OF THE PERSON OBLIGATED, OR A
25 CREDITOR MAY SUBORDINATE ITS RIGHT TO PERFORMANCE OF AN OBLIGATION
26 BY AGREEMENT WITH EITHER THE PERSON OBLIGATED OR ANOTHER CREDITOR
27 OF THE PERSON OBLIGATED.

28 (B) SUBORDINATION DOES NOT CREATE A SECURITY INTEREST AS
29 AGAINST EITHER THE COMMON DEBTOR OR A SUBORDINATED CREDITOR.

30 **2-103.**

31 (1) In this title unless the context otherwise requires

32 (a) “Buyer” means a person who buys or contracts to buy goods.

1 (b) ["Good faith" in the case of a merchant means honesty in fact and
2 the observance of reasonable commercial standards of fair dealing in the trade.]
3 **RESERVED.**

4 (c) "Receipt" of goods means taking physical possession of them.

5 (d) "Seller" means a person who sells or contracts to sell goods.

6 2-202.

7 Terms with respect to which the confirmatory memoranda of the parties agree
8 or which are otherwise set forth in a writing intended by the parties as a final
9 expression of their agreement with respect to such terms as are included therein may
10 not be contradicted by evidence of any prior agreement or of a contemporaneous oral
11 agreement but may be explained or supplemented

12 (a) By **COURSE OF PERFORMANCE**, course of dealing, or usage of
13 trade [(§ 1-205)] **(§ 1-303)** [or by course of performance (§ 2-208)]; and

14 (b) By evidence of consistent additional terms unless the court finds
15 the writing to have been intended also as a complete and exclusive statement of the
16 terms of the agreement.

17 [2-208.

18 (1) Where the contract for sale involves repeated occasions for performance
19 by either party with knowledge of the nature of the performance and opportunity for
20 objection to it by the other, any course of performance accepted or acquiesced in
21 without objection shall be relevant to determine the meaning of the agreement.

22 (2) The express terms of the agreement and any such course of performance,
23 as well as any course of dealing and usage of trade, shall be construed whenever
24 reasonable as consistent with each other; but when such construction is unreasonable,
25 express terms shall control course of performance and course of performance shall
26 control both course of dealing and usage of trade (§ 1-205).

27 (3) Subject to the provisions of the next section on modification and waiver,
28 such course of performance shall be relevant to show a waiver or modification of any
29 term inconsistent with such course of performance.]

30 2A-103.

31 (3) The following definitions in other titles apply to this title:

32 "Between merchants." § 2-104(3).

1 “Buyer.” § 2–103(1)(a).

2 “Consumer goods.” § 9–102(a)(23).

3 “Entrusting.” § 2–403(3).

4 [“Good faith.” § 2–103(1)(b).]

5 “Merchant.” § 2–104(1).

6 “Receipt.” § 2–103(1)(c).

7 “Sale.” § 2–106(1).

8 “Sale on approval.” § 2–326.

9 “Sale or return.” § 2–326.

10 “Seller.” § 2–103(1)(d).

11 [2A–207.

12 (1) If a lease contract involves repeated occasions for performance by either
13 party with knowledge of the nature of the performance and opportunity for objection to
14 it by the other, any course of performance accepted or acquiesced in without objection
15 is relevant to determine the meaning of the lease agreement.

16 (2) The express terms of a lease agreement, any course of performance, as
17 well as any course of dealing and usage of trade, must be construed whenever
18 reasonable as consistent with each other; but if that construction is unreasonable,
19 express terms control course of performance, course of performance controls both
20 course of dealing and usage of trade, and course of dealing controls usage of trade.

21 (3) Subject to the provisions of § 2A–208 on modification and waiver, course
22 of performance is relevant to show a waiver or modification of any term inconsistent
23 with the course of performance.]

24 2A–501.

25 (4) Except as otherwise provided in [§ 1–106(1)] **§ 1–305(A)** of this [title]
26 **ARTICLE** or the lease agreement, the rights and remedies referred to in subsections
27 (2) and (3) are cumulative.

28 2A–518.

1 (2) Except as otherwise provided with respect to damages liquidated in the
2 lease agreement (§ 2A-504) or otherwise determined pursuant to agreement of the
3 parties [(§ 1-102(3) and § 2A-503)] (**§§ 1-302 AND 2A-503**), if a lessee's cover is by a
4 lease agreement substantially similar to the original lease agreement and the new
5 lease agreement is made in good faith and in a commercially reasonable manner, the
6 lessee may recover from the lessor as damages (i) the present value, as of the date of
7 the commencement of the term of the new lease agreement, of the rent under the new
8 lease agreement and applicable to that period of the new lease term which is
9 comparable to the original lease agreement minus the present value as of the same
10 date of the total rent for the then remaining lease term of the original lease
11 agreement, and (ii) any incidental or consequential damages, less expenses saved in
12 consequence of the lessor's default.

13 2A-519.

14 (1) Except as otherwise provided with respect to damages liquidated in the
15 lease agreement (§ 2A-504) or otherwise determined pursuant to agreement of the
16 parties [(§ 1-102(3) and § 2A-503)] (**§§ 1-302 AND 2A-503**), if a lessee elects not to
17 cover or a lessee elects to cover and the cover is by lease agreement that for any reason
18 does not qualify for treatment under § 2A-518(2), or is by purchase or otherwise the
19 measure of damages for nondelivery or repudiation by the lessor or for rejection or
20 revocation of acceptance by the lessee is the present value as of the date of the default
21 of the then market rent minus the present value as of the same date of the original
22 rent, computed for the remaining lease term of the original lease agreement, together
23 with incidental and consequential damages, less expenses saved in consequence of the
24 lessor's default.

25 2A-527.

26 (2) Except as otherwise provided with respect to damages liquidated in the
27 lease agreement (§ 2A-504) or otherwise determined pursuant to agreement of the
28 parties [(§ 1-102(3) and § 2A-503)] (**§§ 1-302 AND 2A-503**), if the disposition is by
29 lease agreement substantially similar to the original lease agreement and the new
30 lease agreement is made in good faith and in a commercially reasonable manner, the
31 lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the
32 date of the commencement of the term of the new lease agreement, (ii) the present
33 value, as of the same date, of the total rent for the then remaining lease term of the
34 original lease agreement minus the present value, as of the same date, of the rent
35 under the new lease agreement applicable to that period of the new lease term which
36 is comparable to the then remaining term of the original lease agreement, and (iii) any
37 incidental damages allowed under § 2A-530, less expenses saved in consequence of the
38 lessee's default.

39 2A-528.

40 (1) Except as otherwise provided with respect to damages liquidated in the
41 lease agreement (§ 2A-504) or otherwise determined pursuant to agreement of the

1 parties [(§§ 1–102(3)] (**§§ 1–302** and 2A–503), if a lessor elects to retain the goods or a
2 lessor elects to dispose of the goods and the disposition is by lease agreement that for
3 any reason does not qualify for treatment under § 2A–527(2), or is by sale or
4 otherwise, the lessor may recover from the lessee as damages for a default of the type
5 described in § 2A–523(1) or § 2A–523(3)(a), or, if agreed, for other default of the lessee
6 (i) accrued and unpaid rent as of the date of default if the lessee has never taken
7 possession of the goods, or, if the lessee has taken possession of the goods, as of the
8 date the lessor repossesses the goods or an earlier date on which the lessee makes a
9 tender of the goods to the lessor, (ii) the present value as of the date determined under
10 clause (i) of the total rent for the then remaining lease term of the original lease
11 agreement minus the present value as of the same date of the market rent at the place
12 where the goods are located computed for the same lease term, and (iii) any incidental
13 damages allowed under § 2A–530, less expenses saved in consequence of the lessee’s
14 default.

15 3–103.

16 (a) In this title:

17 (4) [“Good faith” means honesty in fact and the observance of
18 reasonable commercial standards of fair dealing.] **RESERVED.**

19 (10) “Prove” with respect to a fact means to meet the burden of
20 establishing the fact [(§ 1–201(8))] (**§ 1–201(B)(8)**).

21 4–104.

22 (c) [“Control” as provided in § 7–106 and the] **THE** following definitions in
23 other titles apply to this title:

24 “Acceptance.” § 3–409.

25 “Alteration.” § 3–407.

26 “Cashier’s check.” § 3–104.

27 “Certificate of deposit.” § 3–104.

28 “Certified check.” § 3–409.

29 “Check.” § 3–104.

30 **“CONTROL.” § 7–106.**

31 “Draft.” § 3–104.

1 ["Good faith." § 3-103.]

2 "Holder in due course." § 3-302.

3 "Instrument." § 3-104.

4 "Notice of dishonor." § 3-503.

5 "Order." § 3-103.

6 "Ordinary care." § 3-103.

7 "Person entitled to enforce." § 3-301.

8 "Presentment." § 3-501.

9 "Promise." § 3-103.

10 "Prove." § 3-103.

11 "Teller's check." § 3-104.

12 "Unauthorized signature." § 3-403.

13 4A-105.

14 (a) In this title:

15 (6) ["Good faith" means honesty in fact and the observance of
16 reasonable commercial standards of fair dealing.] **RESERVED.**

17 (7) "Prove" with respect to a fact means to meet the burden of
18 establishing the fact [under § 1-201(8) of this article] (**§ 1-208(B)(8)**).

19 4A-106.

20 (a) (1) The time of receipt of a payment order or communication
21 cancelling or amending a payment order is determined by the rules applicable to
22 receipt of a notice stated in [§ 1-201(27)] **§ 1-202** of this article.

23 4A-204.

24 (b) Reasonable time under subsection (a) of this section may be fixed by
25 agreement as stated in [§ 1-204(1)] **§ 1-302(B)** of this article, but the obligation of a
26 receiving bank to refund payment as stated in subsection (a) of this section may not
27 otherwise be varied by agreement.

1 5–103.

2 (c) With the exception of this subsection, subsections (a) and (d) of this
3 section, §§ 5–102(a)(9) and (10), 5–106(d), and 5–114(d) of this title, and except to the
4 extent prohibited in [§§ 1–102(3)] **§§ 1–302** and 5–117(d) of this article, the effect of
5 this title may be varied by agreement or by a provision stated or incorporated by
6 reference in an undertaking. A term in an agreement or undertaking generally
7 excusing liability or generally limiting remedies for failure to perform obligations is
8 not sufficient to vary obligations prescribed by this title.

9 8–102.

10 (a) In this title:

11 (10) [“Good faith”, for purposes of the obligation of good faith in the
12 performance or enforcement of contracts or duties within this title, means honesty in
13 fact and the observance of reasonable commercial standards of fair dealing.]
14 **RESERVED.**

15 9–102.

16 (a) In this title:

17 (43) [“Good faith” means honesty in fact and the observance of
18 reasonable commercial standards of fair dealing.] **RESERVED.**

19 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 June 1, 2012.